

Message Text

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C O N F I D E N T I A L TOKYO 13671

DEPT. PASS EA/J AND USIA FOR IBS/EO GIANNICO

NAHA PASS VOA

E.O. 11652: GDS

TAGS: APER, AFSP, ELAB, JA

SUBJECT: VOA CLOSURE - FSL UNEMPLOYMENT COMPENSATION

REF: A) STATE 139861, B) TOKYO 7741, C) TOKYO 10399

1. AFTER TWO MONTHS OF DELIBERATION OVER TEXT OF DEPARTMENT'S DRAFT LETTER OF ACCESSION BY VOA/OKINAWA TO GOJ EMPLOYMENT INSURANCE PROGRAM, MOFA HAS GIVEN EMBASSY ITS AMENDED VERSION. MOFA NOW AGREEABLE TO ACCOMPLISHING ACCESSION THROUGH EXCHANGE OF DIPLOMATIC NOTES BUT HAS MADE SEVERAL CHANGES, SOME IN FORMAT, SOME SUBSTANCE, IN U.S. TEXT. TEXTS OF MOFA'S PROPOSED U.S. NOTE AND JAPANESE NOTE IN REPLY AS FOLLOWS:

NOTE VERBALE

THE EMBASSY OF THE UNITED STATES OF AMERICA PRESENTS ITS COMPLIMENTS TO THE MINISTRY OF FOREIGN AFFAIRS AND HAS THE HONOR TO INFORM THE MINISTRY OF THE FOLLOWING ON BEHALF OF THE UNITED STATES GOVERNMENT CONCERNING THE ENROLLMENT OF THE JAPANESE EMPLOYEES OF THE OKINAWA OFFICE OF THE VOICE OF AMERICA IN THE EMPLOYMENT INSURANCE SCHEME OF JAPAN, WHICH COMPRISES THE EMPLOYMENT INSURANCE LAW AND OTHER RELATED LAWS AND REGULATIONS (HEREINAFTER REFERRED TO AS "THE SCHEME");

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1. THE OKINAWA OFFICE OF THE VOA INTENDS TO ENROLL IN

THE SCHEME AS OF APRIL 1, 1976 THOSE EMPLOYEES OF THE
OKINAWA OFFICE OF THE VOA WHO ARE NATIONALS OF JAPAN.

2. THE VOA SHALL UNDERTAKE, INTER ALIA, THE FOLLOWING
ACTIONS IN CONNECTION WITH THOSE EMPLOYEES IDENTIFIED
ABOVE WHO BECOME ENROLLED IN THE SCHEME:

- A. REMIT CONTRIBUTIONS SPECIFIED BY LAW TO APPRO-
PRIATE OFFICIALS OF THE MINISTRY OF LABOR;
- B. MAKE RETURNS ON FORMS AND IN THE MANNER PRE-
SCRIBED BY THE MINISTRY OF LABOR;
- C. FURNISH INFORMATION AS MAY BE RELEVANT TO THE
ADMINISTRATION OF THE SCHEME.

3. IN CONNECTION WITH THE ENROLLMENT OF THE JAPANESE
EMPLOYEES IDENTIFIED ABOVE IN THE SCHEME, THE UNITED
STATES GOVERNMENT ASSUMES:

- A.. THAT THE GOVERNMENT OF JAPAN WILL APPLY UNDER
THE SCHEME THE EMPLOYMENT INSURANCE LAW TO THE
EMPLOYEES COVERED BY THIS NOTE IN THE SAME
MANNER AS IT IS APPLIED TO OTHER NATIONALS AND
RESIDENTS OF JAPAN;
- B. THAT, IF THE VOA SHOULD OTHERWISE BECOME ELIGIBLE
FOR A REFUND OF CONTRIBUTIONS MADE TO THE
SCHEME, EITHER SUCH AMOUNTS SHALL BE APPLIED
IN REDUCTION OF FUTURE OBLIGATIONS FOR CONTRI-
BUTIONS BY THE VOA, OR ANY AMOUNTS OUTSTANDING
TO THE CREDIT OF THE VOA SHALL BE PROMPTLY
REFUNDED UNDER THE SCHEME;
AND
- C. THAT THE VOA WILL BE IMMUNE FROM ANY OBLIGA-
TION WITH RESPECT TO PARTICIPATION IN THE
SCHEME PRIOR TO APRIL 1, 1976.

4. NOTHING IN THIS NOTE IS TO BE CONSTRUED AS A WAIVER
OR AS A MODIFICATION OF THE SOVERIGN IMMUNITY TO BE
ACCORDED TO THE UNITED STATES GOVERNMENT IN ACCORDANCE
WITH THE GENERAL PRINCIPLES OF INTERNATIONAL LAW.

NOTE VERBALE

THE MINISTRY OF FOREIGN AFFAIRS PRESENTS ITS
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COMPLIMENTS TO THE EMBASSY OF THE UNITED STATES OF
AMERICA AND HAS THE HONOUR TO ACKNOWLEDGE THE RECEIPT
OF THE LATTER'S NOTE VERBALE DATED -----
CONCERNING THE ENROLLMENT OF THE JAPANESE EMPLOYEES OF
THE OKINAWA OFFICE OF THE VOICE OF AMERICA IN THE
EMPLOYMENT INSURANCE SCHEME OF JAPAN.

2. EMBOFFS HAVE DISCUSSED WITH MOFA MANY OF THESE

PROPOSED CHANGE, SOME OF WHICH ARE ONLY REVERSAL OF PARAGRAPH ORDER, SOME OF WHICH SIGNIFICANT. SOME POINTS NOTED IN COMPARING U.S. LETTER AND JAPANESE NOTE ARE DESCRIBED BELOW. MOFA DISLIKES U.S. WORDING IN LETTER'S PARA 1 RE "SEEKING COVERAGE BY MEANS OF THIS LETTER" AND "SUBJECT TO FOLLOWING CONDITIONS" BECAUSE OF POSSIBLE IMPLICATION THAT USG WOULD MAKE CONDITIONS CONCERNING OPERATION OF GOJ LEGISLATION. BEGHSYZR IZVTVCOTE THEREFORE READS "INFORMS . . . CONCERNING ENROLLMENT." PARA 3 OF LETTER IS MODIFIED FOR SAME REASON BUT ITS SUBSTANCE IS CONVEYED IN NOTE PARA 3.A AS "ASSUMPTION," MEANING UNDERSTANDING, RATHER THAN AS CONDITION.

3. MOFA FELT LETTER PARA 4 WAS UNNECESSARY AND DELETED IT. MENTION IN LETTER PARA 5 OF "SUBJECT TO PROVISIONS" IS DELETED FROM NOTE PARA 2 BECAUSE OF DISLIKE OF APPARENT CONDITION. ADDITION OF "INTER ALIA" IN PARA 2 WAS NOT EXPLAINED. LETTER PARA 5 A AND B WERE DELETED BECAUSE THEIR SUBSTANCE IS CONTAINED IN C. C IS MODIFIED INTO NOTE PARA 2.A WITH LETTER'S D AND E TRANSPOSED AS NOTE 2.B AND C.

4. LETTER PARA 7 REPLACED AND MODIFIED BY NOTE PARA 4. THIS IS SECTION WHICH CAUSED MOST DIFFICULTY TO MOFA'S TREATY DIVISION. AFTER GIVING MOFA DRAFT NOTE TO EMBOFF, TREATY DIV OFFICER EXPLAINED THAT MAIN STICKING POINT WAS WHETHER MENTION OF SOVEREIGN IMMUNITY WOULD MEAN GOJ RECOGNITION OF USG JURISDICTIONAL IMMUNITY IN ABSOLUTE OR RELATIVE SENSE. HE EXPLAINED THAT JAPANESE JURISPRUDENCE AGREES THAT JURISDICTIONAL IMMUNITY MEANS ABSOLUTE IMMUNITY. HOWEVER MOFA BELIEVES THAT LANGUAGE LETTER PARA 7 IMPLIES THAT THIS TYPE OF IMMUNITY EXCLUDES ENFORCEMENT PROVISIONS AS IMPLIED BY LETTER PARA 7, A
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VIEW JAPANESE DO NOT SHAREE. HE SAID DISAGREEMENT OVER THIS LEGAL POINT HAD PREVENTED AND WOULD CONTINUE TO PREVENT MOFA FROM USING MORE SPECIFIC LANGUAGE REGARDING IMMUNITY. LANGUAGE OF NOTE PARA 4. SHOULD BE ADEQUATE TO COVER QUESTION OF IMMUNITY FOR VOA'S PURPOSES, HE SAID, EVEN IF ENFORCEMENT QUESTION IS LEFT UNMENTIONED.

5. COMMENT: MOFA'S LENGTHY, TIME-CONSUMING REVIEW AND REVISION OF USG LETTER IS FURTHER PROOF OF EXTREMUM CARE WITH WHICH JAPANESE GOVERNMENT APPROACHES ANY MATTER, NO MATTER HOW APPARENTLY TRIVIAL, WHICH DEALS WITH OKINAWA. OKINAWAN QUESTIONS REGARDING VOA CLOSURE AND EMPLOYEE COMPENSATION HAVE ALREADY BEEN RAISED IN DIET BY OPPOSITION. THEREFORE, MOFA EFFORTS AIMED AT INSULATING INSTRUMENT OF VOA ACCESSION TO EMPLOYMENT

SCHEME FROM OPPOSITION ATTACKS

WE BELIEVE THAT MOFA REDRAFT OF OUR LETTER COVERS
ALL OF OUR SUBSTANTIVE CONCERNS AS EXPRESSED IN REFTELS.
WE THEREFORE RECOMMEND THAT DEPARTMENT APPROVE MOFA
VERSION.
SHOESMITH

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